



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF APPEALS & OPINIONS
CRIMINAL APPEALS & FEDERAL HABEAS BUREAU

VIA ECF

February 18, 2021

Hon. Kevin N. Fox
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

MEMORANDUM ENDORSEMENT

Re: *Fennell v. McCarthy*,
1:20-cv-03764-GHW-KNF

Your Honor:

I am the Assistant Attorney General representing the respondent in the above-referenced habeas corpus matter. Respondent hereby renews his motion for an order pursuant to Fed.R.Civ.P. 5.2(d) granting respondent permission to file under seal the State Court Record and state-court transcripts in this case.

On February 9, 2021, respondent moved (Dkt. 27) for an order granting permission to file the State Court Record and state transcripts under seal, in order to protect the identity of the victim of the sex offense in this case. *See* New York Civil Rights Law § 50-b. Respondent noted in his letter motion that the victim's name appears hundreds of times throughout the state-court documents, including in the state-court briefs

and relevant transcripts.¹ As such, redaction of the victim's name in the state-court documents is not reasonably feasible.

On February 11, 2021, this Court denied respondent's sealing motion, "without prejudice to renewal that must comply with Section 6 of this court's Electronic Case Filing Rules and Instructions, including Section 6.5(a) requiring the movant to 'identify the Viewing Level to be applied to the proposed sealed document.'" (Dkt. 28.)

Accordingly, respondent is hereby renewing his sealing motion, which involves the following steps. First, the instant letter motion will be filed today, unsealed, via ECF. Second, the proposed sealed documents – which include the State Court Record and all relevant state-court transcripts – will be filed today under seal via ECF and "electronically related" to this letter motion. Respondent will designate the ECF "Viewing Level" of the proposed sealed documents as "Selected Parties," which in this case consists of petitioner, respondent, and counsel. At the suggestion of the ECF Help Desk, the proposed sealed documents will be filed under the title "Notice of Filing Under Seal of State Court Record." Finally, respondent will today mail petitioner a copy of this motion and all of the proposed sealed documents.

I have not contacted petitioner concerning this motion, as he is proceeding *pro se* and is incarcerated.

Respectfully,

/s/ Paul B. Lyons
Paul B. Lyons (PL 5036)
Assistant Attorney General
28 Liberty Street
New York, NY 10005

¹ On direct appeal in the Appellate Division, First Department, the People requested that in order to protect the identity of the victim pursuant to Civil Rights Law § 50-b, the state filings in this case be kept "confidential" and not be made available for public inspection.

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2/18/21

Application granted.

The respondent shall file an affidavit of service with respect to the letter appearing at Docket Entry No. 31 and the proposed sealed documents, after they are served on the petitioner. The respondent shall also serve the petitioner with a copy of this Memorandum Endorsement and file proof of service with the Clerk of Court.

SO ORDERED:

Kevin Nathaniel Fox

Kevin Nathaniel Fox, U.S.M.J.

DECLARATION OF SERVICE

PAUL B. LYONS, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on February 18, 2021, he mailed the attached letter motion (including proposed sealed State Court Record and transcripts) to petitioner via the United States Postal Service to the following address:

Damique Fennell
DIN 14A4249
Great Meadows Correctional Facility
Box 51
Comstock, NY 12821-0051

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2021.

/s/ Paul B. Lyons
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